

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARCO A. COVARRUBIAS,

Defendant.

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CASE NO. 8:05CR378

MEMORANDUM AND ORDER

This matter is before the Court on the Report and Recommendation (Filing No. 43) issued by Magistrate Judge Thomas D. Thalken recommending denial of the Defendant's motion to suppress (Filing No. 25). No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

The Defendant seeks an order suppressing evidence obtained from the search of the residence in question on September 26, 2005, arguing that the search warrant affidavit lacks probable cause.¹ Judge Thalken determined: the search warrant affidavit was not deficient and contained sufficient probable cause for the issuance of the search warrant; and, even if probable cause were lacking, the *Leon* good faith exception would apply, as none of the exceptions is present.

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court has conducted a de novo review of the record. The Court has read the Defendant's brief (Filing No. 26) and the transcript (Filing No. 33). The Court has also viewed the evidence (Filing No. 32). Because Judge Thalken fully, carefully, and

¹While the Defendant also appears to argue that the affidavit contains false information, no request for a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978) was made.

correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety. The Court fully agrees with Judge Thalken's observations stated at the hearing, including his comment that the affidavit is "full" of probable cause. The affidavit includes: statements made by a reliable confidential informant; information regarding three controlled buys; and the post-arrest *Mirandized* statement of the individual who supplied the methamphetamine in the three controlled buys described in the affidavit.

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 43) is adopted in its entirety; and
2. The Defendant's motion to suppress (Filing No. 25) is denied.

DATED this 7th day of March, 2006.

BY THE COURT:

S/Laurie Smith Camp
United States District Judge